HIGH COURT OF UTTARANCHALAT AT NAINITAL

CRIMINAL APPEAL NO.1209 of 2001
(Old No.701/1987)

Sri Kishan Singh s/o Shri Ratan Singh,
R/O Village Rithad,
District-Almora .....Appellant

Versus

State of Uttaranchal ..... Opposite Party

HON'BLE J. C. S.RAWAT, J.

This is an appeal preferred by the appellant against the Judgment and order dated 28.2.1987 passed by Shri Ramji Lal, the then learned Sessions Judge Almora, whereby the appellant-Kishan Singh was convicted and sentenced to undergo RI for six months under section 352 of IPC. However, other co-accused Pratap Singh, Madho Singh, Dan Singh and Govind Singh were acquitted from the charge under section 147, 504/149, 352/149, 436/149 IPC.

2. The brief facts leading to this appeal are that a written report was lodged at the Patwari HQ Darshani on 24.4.1985 at about 2 p.m. alleging that on 23.4.1985 at about 6 p.m. there was ome quarrel between the appellant and Bahadur Singh P.W.1 with regard to the taking of the water from the Naula (water tank) of the complainant Bahadur Singh P.W.1. The appellant called the other co-accused and the other accused reached there immediately with Lathi and Dandas and the complainant went immediately inside his house and closed the door from inside. The appellant and other accused kept on throwing stones on the roof of Bahadur Singh P.W.1. The appellant and the other persons set fire

to the shop of the appellant causing a loss of Rs.5000/- When the complainant came out from his house he found that the shop was completely brunt. On the basis of the written report of Bahadur Singh P.W.1 an FIR was lodged and investigation was undertaken by the Patwari himself who visited the spot and prepared the site plan and examined the witnesses. After completing the investigation he submitted the chargesheet against the appellant.

3. The appellant was charged under section 147, 352 read with 149 and 436 read with 149 IPC. The appellant denied the charges and claimed trial.

4. The prosecution produced Bahadur Singh P.W.1, Dilip Ram Patwari, Investigating Officer as P.W.2 and Chandan Singh as P.W.3. Out of these witnesses Bahadur Singh is the eyewitness of the incident and complainant of case. Dilip Ram Patwari P.W.2 is the Investigating Officer and P.W.3 Chandan Singh was declared hostile by the prosecution and he did not support the prosecution.

5. The appellant was examined under section 313 Cr.P.C. The appellant has taken the case of the denial and he pleaded that the complainant used to prepare illicit liquor when he was asked not to do so, he falsely implicated the appellant.

6. On appraisal of the evidence on record the learned Session Judge convicted the appellant as indicated above. The rest of the accused namely Pratap Singh, Madho Singh, Dan Singh and Goving Singh were acquitted by the learned Sessions Judge.

7. I have heard the learned counsel for the appellant and learned A.G.A. and perused the record.

8. Now, it has to be seen whether the prosecution has proved the case against the appellant or not. The prosecution has produced the evidence of Shri Bahadur Singh P.W.1 who has stated in his evidence that he had a Naula near his house. The appellant Kishan Singh came at his Naula at about 6 P.M. on the day of incident and started to use the water of Bahadur Singh's Naula and he asked him not to use the water of his Naula and he had another Naula from where he could take his water for his use. When Bahadur Singh P.W.1 objected the appellant-Kishan Singh for using water from his Naula, the appellant abused him and called other persons. On his call, the other persons reached at the spot and Bahadur Singh P.W.1 went inside the house. The appellant alongwith other persons started pelting stones on his house and they also set fire to his shop. The appellant and his children could not come out of their house and remained inside the house till the morning of 24.4.1985. When they came out from their house in the morning they found that the shop was brunt causing a loss of Rs.5000/- and also found that there was a heap of stones in the Angan of Bahadur Singh P.W.1. The report was lodged to the Patwari on 24.4.1985.

9. P.W.1 Bahadur Singh had stated in his evidence that " ग्राम बनौली जहॉ मैं निवास करता हूॅ कुल 40 मवासे रहते हैं..... मेरे मकान व बच्ची राम के मकान के तीच करीब 20 फिट की दूरी है ....मेरे मकान के ऊपर गोपाल सिंह, मोहन सिंह व त्रिलोक सिंह व हीरा सिंह के मकान है जो मेरे मकान से मिले हुए हैं.....। . . P.W.1 has further stated in his cross examination that उमराव सिंह व

मेरे चाचा के परिवार के लोग घर पर थे मौके पर नहीं आए थे। खेतों पर गेहूँ की फसल कट रही थी। खेतों पर काम कर रहे लोगों में से भी कोई नहीं आया।" This evidence of P.W.1 reveals that the place of incident was surrounded by the house of Umrao Singh and other persons and the people were working in the fields. The prosecution could have produced Gopal Singh, Mohan Singh, Trilok Singh, Heera Singh or other persons who were working in the fields. The prosecution had not shown any reason as to why these persons were not produced to corroborate the testimony of Bahadur Singh P.W.1. Thus, the non-production of these independent witnesses creates a doubt about the veracity of the testimony of Bahadur Singh P.W.1. Bahadur Singh P.W.1 has further stated in his evidence during the cross examination that "उस नौले पर किशन सिंह मुल्जिम पानी भरने आया था। वह तौली लाया था। कोई ओर मुल्जिम नहीं आया था। इस मामले में पटवारी जी ने मेरे बयान लिये थे। मैने पटवारी जी को बयान दिया था कि किशन सिंह का लडका मेरे नौले पर पानी भरने को गया था। मैने यह बयान नहीं दिया था। किशन सिंह का लडका व किशन सिंह दोनो थे। नौले पर किशन सिंह ने मुझे कोई चोट नहीं मारी और उसने मौके पर मुझे कोई पत्थर भी नहीं मारा और उसने मौके पर कोई पथराव नहीं किया।"

10. Bahadur Singh P.W.1 has further stated in his evidence that he has got given any statement to the Patwari (Investigating Officer) that the appellant pelted stones on Bahadur Singh P.W.1 at the Naula and he made his escape good by coming inside the house and during this the appellant pelted stones on P.W.1 Bahadur Singh. Bahadur Singh P.W.1 has also stated that the appellant had the 'lathi' in his hand when he was hurling abuses to Bahadur Singh P.W.1 at the Naula. The appellant never anticipated before reaching the place of

incident that Bahadur Singh P.W.1 would meet there and there would be a scuffle with him. In absence of such anticipation on the part of appellant, he was not expected to carry the Lathi with him. Thus the evidence of P.W.1 does not inspire confidence.

11. It is also stated in the evidence of P.W.1 that the appellant had own water source in his village and he takes water there from. There was no occasion for the appellant to come to the place of incident. As such the evidence of P.W.1 Bahadur Singh is highly improbable. Apart this, P.W.1 Bahadur Singh has stated in his evidence that his wife had left his house and she did not reside with him. When the Investigating Officer P.W.2 Dilip Ram Patwari visited his house on the next day, he found his wife inside the house. P.W.1 Bahadur Singh had also stated in his evidence that the appellant and the other persons pelted stones on the roof of P.W.1 Bahadur Singh from 7 to 10OM and a heap of stone was there in the 'Angan' of P.W.1 Bahadur Singh. The Investigating Officer P.W.2.Shri Dilip Ram Patwari prepared the site Plan Ex.Ka 3 in which he had not shown any stone or heap of stone. Thus, the evidence of Shri Bahadur Singh P.W.1 is highly improbable. It is not cogent and believable. The prosecution also adduced the evidence of Chandan Singh P.W.3 who was said to be the eyewitness of the incident. But he had not supported the prosecution version and he was declared hostile.

12. In view of the above, I am of the view that the evidence of the prosecution does not inspire confidence and the appellant could not be saddled with the liability of crime. Therefore, the appellant deserves to be acquitted.

13. The appeal is allowed. Conviction and sentence awarded to the appellant per judgment dated 28.2.1987 passed by the learned Sessions Judge, Almora are set aside. The appellant is on bail. He need not surrender. His bail bonds are cancelled and sureties discharged.

14. Let the lower court record be sent back to the trial court and the compliance report be submitted within a period of two months.

(J.C.S.Rawat, J)

Dated 14.10.2004
P.Anjali